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7

Hon. Richard A. Jones  
Hon. Brian A Tsuchida

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

10 NORTH CASCADES  
11 CONSERVATION COUNCIL; and  
KATHY JOHNSON,  
12  
13 Plaintiffs,  
14 v.  
15 UNITED STATES FOREST SERVICE,  
et al.,  
16  
17 Defendants.

NO. 2:20-cv-01321-RAJ-BAT

OPPOSITION TO MOTION TO  
STRIKE NONCOMPLIANT  
OBJECTIONS

NOTED FOR: JULY 9, 2021

18 Plaintiffs oppose the Forest Service and timber industry's motions to strike plaintiffs'  
19 noncompliant objection. Dkt. 40; Dkt. 42; Dkt. 38. Contrary to the Forest Service's speculation (Dkt.  
20 40 at 5), plaintiffs did not engage in a deliberate strategy of "it's easier to ask forgiveness than it is to  
21 get permission." Plaintiffs simply failed to re-read the report and recommendation's page limits (Dkt.  
22 37, at 45) for objections after having calendared the report's deadline for objections. When drafting the  
23 objection, plaintiffs complied with the Local Rule 72 standard of twelve pages but did not return to  
24 the report. Plaintiffs are not seeking to justify this mistake as a deliberate strategy, nor would it have  
25 been a wise strategy in the first place. It was an error, nothing more or less.  
26

1 The Forest Service notes, accurately, that it is within the discretion of the Court to strike  
2 noncompliant filings. Dkt. 40 at 6, n. 4. We ask the Court to exercise its discretion not to strike.

3 In the first case the Forest Service cites, *Jenkins v. Puckett PLLC*, No. 2:19-CV-1550-BJR,  
4 2020 WL 4517933 (W.D. Wash. Aug. 3, 2020), the stricken filing was a complaint that had not been  
5 timely served. Obviously, the failure to properly serve a complaint is an altogether weightier matter  
6 than the filing of a twelve-page objection instead of a six-page one. *Jenkins* is a poor analogy for the  
7 issues at stake here.

9 In the Forest Service's second case, *R.K. v. Corp. of President of Church of Jesus Christ of*  
10 *Latter Day Saints*, No. C04-2338RSM, 2006 WL 2506413 (W.D. Wash. Aug. 28, 2006), the issue  
11 was an overlength reply in support of a motion in limine—twelve pages instead of the allowable six,  
12 just as here. The Court allowed the overlength filing, with a warning that further overlength filings  
13 would not be allowed. Such a warning would be appropriate here.

15 In the third case, *Expedia, Inc. v. Reservationsystem.com, Inc.*, No. C06-1580RSM, 2007 WL  
16 201069 (W.D. Wash. Jan. 23, 2007), the Court struck an overlength reply brief, as well as a belated  
17 attempt to file a reply brief that did comply with page limits. In that case, the party making the  
18 overlength filing offered the Court no explanation other than a footnote asking the court to accept the  
19 filing—a high-handed and disrespectful treatment of the Court that leaves the Court to guess whether  
20 the overlength brief was deliberate or inadvertent; necessary or not. Here, we do not high-handedly  
21 expect the Court accept our filing without any explanation. Our explanation is that we have made a  
22 mistake and that good cause exists for allowing a twelve-page objection. See mot. for overlength  
23 objection (Dkt. 39). We were not engaged in a deliberate strategy to ignore the Court or force the  
24 Court's hand, and there would have been no advantage to such a strategy.  
25  
26

1 In the final case, *King Cty. v. Rasmussen*, 143 F. Supp. 2d 1225 (W.D. Wash. 2010), *aff'd* 299  
 2 F.3d 1077 (9th Cir. 2002), the overlength filings were a thirty-four page motion for summary judgment  
 3 and a thirty-four page reply, plus a declaration containing further legal argument. Local Rule 7 sets  
 4 limits of twenty-four pages for motions and eight pages for reply, and does not allow legal argument  
 5 in declarations. Here, by contrast, although our objection is not compliant with the magistrate judge's  
 6 report, it is compliant with Local Rule 72. Unlike the *Rasmussen* litigant, we did not fail to consult  
 7 any authority, although we did consult the wrong authority. In upholding *Rasmussen*, the Ninth Circuit  
 8 noted that striking the overlength pages in the *Rasmussen* filings would not preclude consideration of  
 9 any issues, because the issues had all been argued in the compliant portions of the filings. Here, by  
 10 contrast, our objection raises two issues: roads and woodpecker populations. If the overlength portion  
 11 is stricken, we will lose all of our argument on the woodpecker issue.  
 12

13  
 14 In the interest of fairness, we would support a twelve-page limit for the Forest Service and  
 15 industry's responses to our objection (which would give the respondents, in aggregate, double our  
 16 page limit, an advantage they have enjoyed throughout this case), as well as an extra week to file such  
 17 responses to account for the delay occasioned by the respondents' motion to strike.  
 18

19 Dated this 6th day of June, 2021.

20 Respectfully submitted,

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